

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE
DIVISION III**

CA06-1194

May 23, 2007

MELVIN CARPENTER
APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F313638]

V.

SARIO MONDRAGON (DECEASED)
APPELLEE

AFFIRMED

This is an appeal from an award of workers' compensation medical and funeral expenses to the family of an employee killed on the job site. On appeal, the appellant-employer asserts that the evidence is insufficient to show that the decedent was performing employment services at the time of his death. We affirm.

In reviewing decisions from the Arkansas Workers' Compensation Commission, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Swearengin v. Evergreen Lawns*, 85 Ark. App. 61, 145 S.W.3d 830 (2004). Substantial evidence exists if reasonable minds could reach the same conclusion. *Id.*

Here, there was evidence that the decedent had been employed by appellant moving, repairing, and refinishing furniture. Some of this work was performed outdoors. Employees were required to return all tools and furniture to the indoor shop at the end of the day as a security measure to prevent theft. Chris Carpenter, grandson of appellant and a co-worker of the decedent, had been permitted to practice archery outside the workshop when it was time for other workers to return materials to the shop at the end of a day. On the day in question, the decedent walked around the corner of the shop and was struck in the eye with an arrow loosed by Chris Carpenter. The decedent was transported to the hospital for treatment but died of his wound.

The decedent's family sought medical benefits and funeral expenses incurred because of the decedent's death. The Commission found that the decedent was performing employment services at the time that he was injured based on evidence that the decedent still had work to do outside the shop, that he was outside the shop at the time of the accident, and that, soon after the fatal accident, some furniture remained outdoors and the workshop had not been closed. Appellant argues that this finding is not supported by substantial evidence because there was no direct evidence of precisely what the decedent intended to accomplish while walking outside the shop when he was killed. This argument fails.

An employee is performing "employment services" when he or she "is doing something that is generally required by his or her employer." *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 478, 6 S.W.3d 98, 100 (1999). Our supreme court has declared that the test for

determining whether an employee was performing employment services at the time of an injury is the same as that for determining whether the employee was acting within the course of employment: “whether the injury occurred within the time and space boundaries of the employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly.” *Pifer v. Single Source Transportation*, 347 Ark. 851, 857, 69 S.W.3d 1, 4 (2002). Circumstantial evidence can suffice to establish that one was engaged in an activity within the course of his employment at the time of injury. *Franklin Collier Farms v. Bullard*, 33 Ark. App. 33, 800 S.W.2d 438 (1990); *see Eagle Safe Corp. v. Egan*, 39 Ark. App. 79, 842 S.W.2d 438 (1992) (a person’s intent may be shown by circumstantial evidence). The evidence relied upon by the Commission in this case, though circumstantial, is quite clearly a sufficient basis for reasonable minds to conclude that the decedent was performing employment services at the time of the injury that caused his death.

Affirmed.

BIRD and GRIFFEN, JJ., agree.